

GUIDELINES FOR USING UNDERAGE COOPERATING INDIVIDUALS DURING COMPLIANCE CHECKS

Through the passage of LB 114 (effective 09-01-01), the Nebraska Legislature amended Nebraska State Statute 53-1,122 to statutorily authorize law enforcement officers to conduct alcohol compliance checks. The Legislature also specified that all alcohol compliance checks in Nebraska shall be conducted pursuant to guidelines adopted and promulgated by the Nebraska State Patrol with input from the Liquor Control Commission. In order to comply with Nebraska Law the following guidelines must be followed by law enforcement agencies that use underage individuals to conduct compliance checks for the purpose of detecting alcohol violations.

Prior to conducting any compliance checks a list of randomly chosen locations should be developed. It is appropriate to add to this random list locations that have failed previous compliance checks and/or locations for which complaints of alleged sales of alcohol to minors have been received. (Locations that have failed previous compliance checks should be given sufficient time between checks to allow the licensee to develop and implement strategies to address sales to minors.) If sufficient personnel are available, it is also appropriate to check all the locations in a certain geographic area or all the locations that have the same class of license rather than developing a randomly chosen list. A searchable list of premises with liquor licenses can be found at the Nebraska Liquor Control Commission's web site at <http://www.nol.org/home/NLCC/>. This list can be sorted by license type, city, street address and county.

Parental permission is required for cooperating individuals under the age of 18 (unless emancipated). Minors selected as C.I.s for conducting compliance checks shall, in their dress and appearance, be within the range of normal for minors in that geographical area. There should be no alteration to their normal dress and/or appearance for conducting compliance checks. Do not hesitate to instruct, advise and/or correct a C.I. in appearance matters regarding appropriateness for compliance checks. Headwear if worn, should be worn in a manner that is normal for their age.

C.I.s must be informed that they will be required to appear and testify before the Liquor Control Commission if needed. When appearing before the Liquor Control Commission, every effort should be made to ensure that the C.I.'s appearance is the same or similar to the way it was when the compliance check was conducted. Witness fees and mileage are paid to individuals subpoenaed to appear before the Commission. If the C.I. is to be paid, payment should be made on an hourly basis or daily rate and shall not be paid based on the number of compliance checks completed or the number of purchases made. Continued use of an individual as a C.I. shall not depend on the number of cases made. The use of individuals working to avoid being charged for a prior or pending alcohol violation is strongly discouraged.

C.I.s should not order or purchase more alcohol than is reasonable to establish a violation. (It is not necessary for a C.I. to consume alcohol for a violation to occur; having alcohol in his or her possession is a violation of the Liquor Control Act.)

Underage C.I.s should be specifically instructed:

- Not to use a disguise that makes them appear older than they actually are.
- Not to use or possess false, borrowed or altered identification.
- To use their own personal, valid identification, i.e., driver's license, state I.D., etc.
- Not to lie to a sales clerk if asked their date of birth, if they are old enough to purchase alcohol, or their age. (If the C.I. is asked if he or she is old enough to purchase alcohol, it is acceptable for the C.I. to respond with, "Would you like to see my I.D.?" or some other similar reply as long as it is not deceptive in regard to his or her actual age.)
- To correctly fill out the documentary proof of age booklet if requested to do so. In order to protect the safety of the C.I. they may use an address that is not their own. The address of the local law enforcement agency is suggested as an appropriate substitution.
- To be prepared to accurately describe and identify the sales clerk for enforcement action.
- If asked they may answer the question, "Are you working for law enforcement?" with "No." (Any other deceptions are not permitted.)

Enforcement officers should:

- Be positive the C.I. understands all instructions and knows exactly what to do and say. (Coaching a C.I. on how to look and act older is not permitted.)
- Take several photographs of the minor prior to beginning the compliance check. (A Polaroid is acceptable.) Several photos will be needed as exhibits for court/commission proceedings.
- Ensure that the C.I. is not in possession of any form of identification other than his or her own, valid identification, and has no alcohol on his or her person.
- Make a photo copy or take a photograph of the C.I.'s identification.
- Remain in close proximity, or actually enter the retail outlet to view as much of the transaction as possible.
- Ensure C.I. safety by monitoring the C.I.'s conversation with a transmitter or other equipment if practical and if such equipment is available.
- Supply the C.I. with any funds needed to make purchases and document expenditures as they occur (noting specifically the amount tendered and change received).
- Immediately take possession of the evidence from the C.I. upon leaving the retail establishment.
*Note: For purchases made at on-sale locations the officer should confirm that the beverage served to the minor contains alcohol (by smell, personal observation, and/or by their training and experience).
- Not conduct multiple, nonsimultaneous compliance checks on a single establishment within a 24-hour time period.

Upon detection of a violation:

- The sales clerk should be issued a criminal citation to court for the violation.
- The staff should be notified that a report will be sent to the Liquor Control Commission for administrative proceedings against the liquor license.
- The C.I. should immediately prepare a written statement regarding the details of the purchase, identification of the clerk/bartender and any conversation pertinent to the case.
- Officers should prepare a written report which includes a brief statement regarding the instructions that the C.I. was given prior to the compliance check. The statement should also indicate that these guidelines were followed as required by 53-1,122. In addition, reports should include: 1) the time and date of the purchase; 2) the brand, quantity and type of alcohol purchased; 3) the amount spent for the purchase; 4) the identity of all clerks/bartenders/wait staff involved and other witnesses present; 5) whether or not the C.I.'s identification was checked and whether the documentary proof of age book was used; and, 6) the name of the business involved and the liquor license number, if known. *Because Liquor Control Commission Hearings often are held several months after a violation is discovered, it is important to ensure that the C.I.'s and officers reports contain all the elements of a violation, are accurate and are complete enough to refresh your memory prior to providing testimony.*

Mailing congratulatory, follow-up letters to establishments indicating that they successfully passed a compliance check is suggested. (The date and time of the compliance check and the name of the clerk/bartender present, if known, should be noted in the letter.)

It is requested that the results of any compliance check be sent to the State Patrol Alcohol Tobacco Enforcement Coordinator in order to maintain an accurate statewide database of compliance rates, I.D.'s checked and the ages of the C.I.s used.

Upon request the State Patrol can provide sample forms for parental permission, C.I. agreements, C.I. briefing sheets, violation reports, congratulatory letters and statistical tracking forms. Questions, comments, suggestions and requests for more information or training should be directed to: Nebraska State Patrol, Alcohol-Tobacco Enforcement Coordinator, (402) 471-2575.

(revised 11-01)